IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2107 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI JN TANNA - Petitioner(s)

Versus

COLLECTOR & 1 - Respondent(s)

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Appearance :

MR BA SURTI for Petitioner(s) : 1,

MS ARCHANA RAVAL AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/02/2006

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Secretary, Food and Civil Supply, State Government dtd.17/10/1994 in Revision Application / Appeal No.778 of 1993 in partly allowing the said revision application / appeal, modifying the order passed by the Collector, Rajkot dtd.3/12/1993 and directing to confiscate 10% stock of Ground-nut Oil seized from the petitioner.

2. The petitioner was having licence as Commission Agent of Ground-nut Oil as required under the provisions of the Gujarat Essential

Articles Controlled Order, 1981. The petitioner was served with show cause notice dt.12/10/1993 and the petitioner was directed to show cause as to why the entire quantity of Ground-nut Oil seized i.e. 19,788 KG worth Rs.7,92,828.08 ps. Should not be confiscated. The petitioner replied to the said show cause notice denying the averments and thereafter, the Collector, Rajkot passed the impugned order dtd.3/12/1993 directing to confiscate the entire quantity of 19,788 KG worth Rs.7,92,828.08 ps. seized. Against the said order, the petitioner preferred a Revision Application / Appeal before the State Government being Appeal No.778 of 1993 and accepting the contentions on behalf of the petitioner, the Dy.Secretary partly allowed the said appeal and directed to confiscate only 10%$ of the goods seized. Being aggrieved by and dissatisfied with the said order, the petitioner has preferred the present petition under Article 226 and 227 of the Constitution of India.

3. Mr.B.A. Surti, learned advocate appearing on behalf of the petitioner has submitted that as such the Dy.Secretary has specifically found in favour of the petitioner, still the Dy.Secretary has passed the impugned order directing to confiscate 10% of the seized quantity, which requires to be quashed and set aside. He has also further submitted that it is specifically held by the Dy.Secretary in the impugned order that the stock is confirmed by the circumstantial other documents, still the impugned order has been passed confiscating 10% of the quantity, which requires to be quashed and set aside.

4. Ms.Archana Raval, learned AGP while supporting the order passed by the Dy.Secretary has submitted that considering the fact that it is held and proved that Gate-Pass was not prepared and quantity of Ground-nut oil was not mentioned in the Stock Register within the time,

the order passed by the Dy.Secretary is just and proper and is not required to be interfered with.

5. Heard the learned advocates appearing on behalf of the parties. On going through the entire impugned order passed by the Dy.Secretary, Food and Civil Supply, State of Gujarat dtd.17/10/1994, it appears that as such the Dy.Secretary has found in favour of the petitioner and all the findings are recorded in favour of the petitioner. However, the Dy.Secretary has held that though at the relevant time, Gate-pass was not there still stock is confirmed considering the circumstantial other documents which were seized at the time of raid. Once that finding is recorded, there was no reason for the Dy.Secretary to impose penalty of even 10% of confiscation of goods / quantity seized and therefore, considering the findings recorded by the Dy.Secretary in the impugned order, the order directing to confiscate 10% of

the quantity of ground-nut oil seized is required to be quashed and set aside.

6. For the reasons as aforesaid, the petition succeeds. The impugned judgement and order passed by Dy.Secretary, Food and Civil Supply, State of Gujarat dt.17/10/1994 in Appeal No.778 of 1993 as well as the order passed by the Collector dtd.3/12/1993 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

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